

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5400 OF 2007

Narayan Vasant Mathkar & Anr.....		Petitioners
V/s		
The State of Maharashtra & Anr....		Respondents.

Mr.Bhavesh Parmar, Adv. For the petitioners.

Ms.V.S.Mhaispurkar, AGP for respondent No.1.

Mr.Birendra Saraf with Mr.Swapnil Bangru with Mrs.Meenakshi Mhapankar i/by V.Deshpande & Co. for respondent No.2.

CORAM: A.P.DESHPANDE, J.

8/8/07

PC:

The petitioner in the present petition is borrower against whom the respondent-bank has proceeded and obtained a recovery certificate under section 101 of the Cooperative Societies Act (the "Act"). Aggrieved by the said certificate the present petitioner preferred revision under section 154 of the act. On account of non-compliance of provisions of section 154(2)(A) of the act revision came to be dismissed. It may be incidentally stated that sub-rule 2A provides for a pre-deposit of 50% of the amount covered by the recovery certificate for entertaining the revision. The order passed in revision came to be challenged by filing writ petition. Writ Petition No.6481/06 came to be dismissed by an order dated 17.10.06. On account of which the challenge to the recovery certificate finally failed. After dismissal of the writ petition the Special Recovery Officer of the respondent-bank has proceeded to issue demand notice, possession notice and notice of attachment in exercise of powers under Rule 107 of the rules read with section 156 of the Act.

The present petition came to be filed wherein yet again the recovery certificate dated 4.2.06 came to be challenged besides challenging the demand notice dated 19.4.06 and possession notice dated 27.7.07. The learned counsel while arguing the matter has given up the challenge to the recovery certificate as obviously the judgment in the earlier petition operates as res judicata. Wholly unsustainable contentions are raised in the present petition one of which pressed in service was in regard to different in the loan account numbers. There has been never any dispute about loan account number in view of the admitted fact that the petitioner had borrowed loan only once and the defaulted account happened to be only one. Perused the impugned notices. Challenge to the same is wholly devoid of any substance. In the peculiar facts of the present case learned counsel for the respondent-bank submits that the bank has been dragged from Forum to Forum by setting up flimsy pleas which are not worth adjudication. He however submits that yesterday the balance amount save and except costs have been paid by the petitioner by issuing pay order and despite the said payment the present petition is being contested. Thus he submits that this is fit case for awarding costs. I am in agreement with the said submission. Hence writ petition is summarily dismissed subject to payment of costs of Rs.10,000/- by the petitioner to the respondent-bank.

8.8.07